



# Bulletin

of the Mahoning County Medical Society  
Summer 2004



## From the President

by Marc S. Saunders, DO

Hi, everyone. The results of our research are out, and they are eye-opening. For all those who don't know what we decided to do, I got tired of hearing about the numbers of "cases" filed in Mahoning County and not the numbers of doctors sued and decided to have all the dockets opened in Mahoning County so that the raw numbers of physicians sued could be counted. In addition, we counted the numbers of doctors dismissed, those who settled, and those who went to trial. From this data, at an average cost of \$20,000 per physician per filing of a malpractice action, we were able to calculate the approximate amount of insurance money needlessly spent on suing doctors that had absolutely no reason to be sued in the first place. The results are published in this issue of the Bulletin (see page 3). Do the math.

For the past year and a half, you have heard me talk about how the numbers of doctors sued is likely to be the sole driving force behind our increased malpractice insurance premiums. Interestingly, the data clearly shows that after 2001, the numbers of physicians sued dramatically decreases from year to year. This seems to be contrary to my theory. However, here's what I feel is the most important finding in the research, and needs to be understood by all. If we go back to the year 2000 and examine the data, we find that only about 35% (that's thirty five percent) of the doctors sued have been dismissed from their cases. That means that 65% of the doctors are still actively involved in their suits, even if they've done nothing wrong. The plaintiffs' attorneys in Ohio claim (as recently as their round-table discussion in the mid-June 2004 issue of the *Business Journal*) that increasing the statute of limitations for discovery would limit the numbers of doctors sued because the true negligence could be more easily identified. My answer: Baloney! How long do these guys need? If you can't find the negligence in four and a half years, THERE ISN'T ANY! Keeping the doctors and insurance companies on the hook this long says to me that they're not looking for the negligence, they're trying to manufacture a case. If anyone has an opinion other than this about what this research shows, please let me know.

By the way, the current malpractice insurance crisis in Ohio forced me to make a drastic decision in my practice recently. In order to be able to stay in Ohio, I became an employee of St. Joseph Health Center in Warren a few months ago. It was a relatively quick happening, and I was not able to get word out before the move occurred, so to everyone who was wondering if I vanished from the area, I apologize. I am still around, and am working both in Warren and Youngstown. I'll be sending out details in the mail. As you can see, this crisis has greatly affected me as well.

Since my last column, Governor Taft signed two bills into law. The most important one was Substitute House Bill 215. Although initially designed to set up medical review panels, this did not appear in the final version. What it does however, is to place expert witnesses under the scrutiny of the Ohio State Medical Board, with false testimony subject to sanctioning as if an out-of-state expert were an Ohio physician. The expert witness is now required to be board-certified in the same specialty as the defendant. In addition, it is now o.k. to show sympathy to a family without it being used against a doctor in court, and allows doctors to file "affidavits of non-involvement" to show they have done nothing wrong. Finally, it gives the Ohio Department of Insurance more regulatory power to collect medical claims data.

This summer, our "Where Does It Hurt" campaign will focus on radio spots, and office posters and brochures are out. You may have already received them. This fall, we all have to concentrate on getting the court re-elected in our favor. The candidates endorsed by the OSMA are Moyer, O'Donnell, and Lanzinger. Remember the word "MODEL".

That's all for now. Enjoy your summer so you can ready your strength for the fall. And if you get a chance, turn on the radio.

# Bulletin

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## CALENDAR

**September 1~6, 2004**      *Canfield Fair*

**September 15, 2004**      *Council Meeting*

**September 28, 2004**      *Society Dinner, Holiday Inn, Boardman*

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## Thanks, Ann, For Nothing

Over the past few years, as we physicians have struggled with skyrocketing insurance expenses, we have pursued many avenues looking for help in our plight. Tort reform, aided by our support in placing rational judges on the bench, appeared promising, but has yet to bear fruit for our labors, and may even be thrown out entirely when the trial lawyers' lobby reinstates their favorite sons. Aggressive lobbying efforts with our legislators has been even more frustrating, as expected, resulting only in a few ultimately meaningless additions to the registers of state and federal law. Individual negotiations with the insurers themselves have provided some anecdotal relief for at least a few of us. Hospitals and their parent corporations have also helped in some cases, opening their "captive" programs to those in need, but have (so far) refused to bend on lowering limits of required coverage, which would save us about 20% annually on premiums. Nonetheless, these latter examples represent at least some success with free-market solutions, in stark contrast to the complete failure from the government / regulatory efforts.

A perfect example of governmental impotence is found at the Ohio Department of Insurance, led by Ann Womer Benjamin, who received this appointment as a political door prize following her losing bid for election as Representative for the 17<sup>th</sup> District. After learning, to her apparent complete surprise, as to the very existence of our crisis, her response has been to send out a few vague, pointless questionnaires, and a memorandum reminding us of the risks of participating in "captive" insurance plans. She points out that these plans are not part of the Ohio Guaranteed Fund, and are furthermore not regulated by her department, supposedly thereby making them "risky". This ignores the reality that, with plans available to me that are under her domain, I am guaranteed to spend unconscionable sums for said insurance, and furthermore risk spending more for insurance than what I have left to bring home.

Consider the following: our pension plans and most other investments are not guaranteed either, and yet we participate in them willingly. We are and should be willing to accept risk. Those plans which are guaranteed and regulated by ODI are precisely the cause of the problem with which we are now faced. Private insurance companies are not in the business of protecting me and my assets. They are in the business of making a profit on my need for insurance, which is a very difficult thing to do in this environment of high regulation and low return on investments. These companies, in response, have essentially turned actuarial science on its ear, raising rates based more on ability to pay rather than actual risk. What we are finding out the hard way is that subspecialists in fact aren't necessarily able to pay after all, and are leaving the field instead, creating large surgeon-shaped holes in our community.

I must acknowledge that the ODI exists for regulatory government purposes, not for us, the consumers, and is essentially powerless in aiding with our plight. Informing us that "captive insurers may be a risky coverage option" is probably the fullest extent of the help Ms. Benjamin and the ODI has to offer us. All I really need is a piece of paper with the right numbers on it, not the advice of a political also-ran who cares more about her government pension than whether I am available to serve our community in a time of need. Thanks for the heads-up, Ann, but I'll keep looking elsewhere for my answers, even if it takes me offshore.

### MEDICAL MALPRACTICE CASES

YEAR	2000	2001	2002	2003	2004
# CASES FILED	126	174	173	92	25
# DEFENDANTS	645	1091	813	420	133
# DEFENDANTS RELEASED	221	237	249	99	PEND.
# NOT RELEASED	424	854	564	321	PEND.
% DEF. RELEASED	34.30%	22.00%	31.00%	24.00%	PEND.
# CASES DISMISSED	75	63	67	23	-0-
# CASES SETTLED	37	53	21	3	-0-
# CASES OPENED	14	40	72	62	25
# CASES W/ NO ENTRY	-0-	2	4	1	-0-
OTHER	-0-	16	9	3	-0-



# Report on AMA Annual Meeting

Daniel W. Handel, MD

The annual meeting of the American Medical Association House of Delegates was held in Chicago from June 11-16, 2004. This year the House considered action on 83 reports and 205 resolutions. Several of the more interesting issues are covered below. For the full lists of reports and resolutions and actions taken by the House please go to the AMA website, [ama-assn.org](http://ama-assn.org).

**Resolution #2 - Asked for Presumed Consent on organ donation.** Referred to the Board for thorough study and report. In Ohio if one has signed with the BMV to be an organ donor, the family's wishes to the contrary are overruled.

**CEJA Report II – Direct-to-Consumer Diagnostic or Screening Services.** There was extended testimony and debate leading to referral of this report.

## **BOT – Report 17 – Licensure and Liability for Senior Physician Volunteers**

**Res #130 – Liability Protection for Volunteer Physicians** - These two items exceed what Ohio has already passed into law. They ask for reduced-fees volunteer medical licenses and the promotion of more opportunities for physician who wish to volunteer.

**Council on Medical Service Report (2) Comparing Health Insurance Premiums Studies and Tax Credits** – This report contains excellent information on the subject and simple definitions. This subject is dealt in detail within a JAMA article, May 12, 2004, "Expanding Insurance Coverage Through Tax Credits, Consumer Choice and Market Enhancements".

**Res. 202 – Reform of Civil Justice System** asked "that AMA notify physicians, that except in emergencies and except as otherwise required by law or other professional regulation, that it is not unethical to refuse care to plaintiffs attorneys and their spouses". The author of this article, Dr. Chris Hawk from South Carolina, was the first to speak in reference committee and immediately withdrew his resolution stating that his point had been made. Testimony was unanimously against the first resolve of this resolution stating that such action was highly discriminatory and not an appropriate manner to bring attention to the medical liability crisis. It did indeed attract extensive media attention.

**Res. 213 – Liability Surcharges in Physicians Offices** was referred to the BOT for a study and the report will be forthcoming at Interim Meeting 2004.

**Res. 443 – FDA Rejection of O-T-C Status for Emergency Contraception**. This adopted resolution asks the AMA to express its opposition to and public urge the reconsideration of the FDA's rejection of o-t-c status for emergency contraception. It also asked the AMA to collaborate with state, national specialties, and local societies and other interested foundations to increase access to emergency contraception.

Policy was passed whereby all physicians who testify as expert witnesses in medical liability would voluntarily sign an affirmation that they will adhere to AMA principles guiding expert witness testimony.

**Res. 707 – Specialty Hospitals and Impact on Health Care** calls for a comprehensive study including the impact of provision of health care, pressures and tactics used by hospitals to stop specialty hospitals, benefits, financial impact on community hospitals, and the appropriateness of physician referral patterns.

Dr. Donald Palmisano completed his year as President. His energy, enthusiasm and effectiveness were well demonstrated as he led the charge for reform of the current medical liability system. His actions and articulations put the crisis in focus for the nation. In a recent poll, 72% of those polled supported reform of the current system.

Dr. John C. Nelson was sworn in as President of the AMA. Dr. Nelson, an Ob-Gyn physician from Salt Lake City, Utah, called for physicians "to light the fire from within" – inspired by his hometown's hosting of the 2002 Winter Olympics in which children with handheld lanterns illuminated the entire stadium.

Dr. Nelson outlined the AMA's comprehensive bipartisan-supported healthcare campaign "Healing the System". This campaign seeks refundable, advanceable tax credits inversely related to a person's income. Significant changes in Medicare are required to "keep pace with clinical medicine and burgeoning population of baby boomers". Finally, the AMA's top legislative initiative remains medical liability reform and on this issue medicine must present a united front.

## Bits 'n' Pieces

### 2005 DUES BILLING TO BE SENT IN SEPTEMBER

Membership dues billing for 2005 will be mailed to all current members the first week in September. As we did last year, the MCMS will handle the billing locally. Please check your invoice carefully and notify the office immediately if there is a change in your membership status or address, or any other information on your bill. If your practice was not included in the group billing last year and you wish to do so, please let us know before the end of August.

### CHANGES TO DIRECTORY

Please make the following changes to your 2004 Membership Directory:

Robert Lewis, MD - Board certified in both general surgery and plastic surgery

Lisa Weiss, MD - Board certified, Family Practice

Gregory Facemyer, MD - Board certified, Family Practice

Michael Kavic, MD - Board certified, General Surgery

We apologize for these omissions.

John Altier, MD - Retired

Change of Address:

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### CHANGES (cont.)

DROPPED MEMBERSHIP

Bhagwan Dass, MD

Ashraf Elguizaoui, MD

Martin Escobar, MD

Paul Mahar, MD

Gerald Mihok, MD

Gilbert Palmer, MD

Glenn Ray, MD

Robert Sinsheimer, MD

Homer Skinner, DO

Jose Yap, MD

In the listing of Members By Specialty, Anesthesiology, Dr. Ronald Prizant's telephone number should have a 330 area code, not 440.

### SUPREME COURT RACES

Once again this year, preserving the philosophical majority on the Ohio Supreme Court is a priority for physicians and critical to the future of medicine. The MCMS and OSMA will be conducting voter education campaigns regarding the importance of the upcoming elections, and OMPAC will be working to support the election efforts of **Chief Justice Tom Moyer, Justice Terrence O'Donnell and Judge Judy Lanzinger** for the Ohio Supreme Court.

### Report on AMA Annual Meeting (cont.)

Dr. Ed Hill, a family physician from Mississippi was voted President-elect. He defeated Herman Abromowitz, a family physician from Dayton, Ohio after a spirited campaign. The Ohio Delegation, under the leadership of Chairman, Walter Reiling, Vice Chairman, Lance Talmage and Steven Polsley ran an energetic, enthusiastic and honest campaign. Although we did not achieve victory we can be proud of Dr. Abromowitz and our delegation.

Six open forums were held: Pain Management, Electronic Health Records, Litigation Center Activities, CEJA Open Forum and the Aetna and CIGNA Settlement. The Obesity Forum was so well attended that it required transfer to a larger room. There were discussions on public health, state and AMA's initiatives on obesity. The AMA has a CD available for its members, "AMA's Roadmap for Clinical Practice, Assessment and Management of Adult Obesity". During the course of the House of Delegates our speaker asked us to calculate our individual BMI and more than half of the members of the House were overweight. We have been challenged to "reduce the size of the house".

This is just a sampling of the Reports and Resolutions before the House of Delegates and I encourage you to go to the AMA website for a more comprehensive review. Also, read the AMA News for July 5<sup>th</sup> which provides more background on these issues.

As a Delegate to the AMA, I encourage all Mahoning County physicians to become more involved in organized medicine's efforts to improve the milieu in which we practice and give care to our patients. Be assured that the AMA is committed to achieving medical liability reform and that this remains its number one priority. For the AMA to be successful, however, it will require that organized medicine speak with a unified voice and have strong grass roots participation among its member physicians. If there are issues you feel should be addressed by the AMA, please let me hear from you.

Daniel W Handel MD

## NEW MEMBERS

### Thomas A. Bailey, MD

Internal Medicine

25 N. Canfield-Niles Road  
Suite 100  
Youngstown, OH 44515

Medical Education: Northeastern Ohio Universities College of Medicine

Internship: St. Elizabeth Health Center, Youngstown  
Residency: St. Elizabeth Health Center, Youngstown

### Arthur M. Brant, MD

Ophthalmology

1700 Third Street  
Beaver, PA 15009

Medical Education: Johns Hopkins University, Baltimore, MD

Internship: Greater Baltimore Medical Center

Residency: University of Pennsylvania, Philadelphia

Fellowship: Wilmer Eye Institute of Johns Hopkins

### Dean R. Ball, DO

Radiology

7067 Tiffany Blvd.  
Youngstown, OH 44514

Medical Education: Des Moines University College of Osteopathic Medicine

Internship: William Beaumont Hospital, Detroit, MI  
Residency: William Beaumont Hospital, Detroit, MI

### Carrie M. Cannon, MD

Neonatal/Perinatal Medicine

St. Elizabeth Health Center  
1044 Belmont Ave.  
Youngstown, OH 44501

Medical Education: Ohio State University College of Medicine

Internship: Pitt County Memorial Hospital,

Greenville, NC

Residency: Pitt County Memorial Hospital,

Greenville, NC

Fellowship: Magee Womens Hospital, Pittsburgh, PA

### Charles Sammarone, DO

Family Practice

730 N. Main Street  
Hubbard, OH

Medical Education: Ohio UniversityCollege of Osteopathic Medicine

Internship: Youngstown Osteopathic Hospital

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# Legislative Wrap-up

The following information is reprinted with permission from the Ohio State Medical Association. You may view the entire Legislative Wrap-up at [www.osma.org](http://www.osma.org).

The Ohio legislature has been in active session for the last 18 months and has addressed a broad array of issues ranging from the state budget to controversial social policies to tort reform. From the beginning, the Ohio State Medical Association has jockeyed through the myriad interest groups and political issues to be at the forefront of the health-care policy discussions. We've devoted countless resources to issues that are fundamental to physicians and their patients, with a particular emphasis on addressing the medical liability insurance crisis, reimbursement issues, scope-of-practice debates and reducing the "bureaucracy" of medicine.

What follows is a brief description of activities that have occurred during the first 18 months of the two-year legislative session. We hope you find this information useful and agree that the legislative policy work and lobbying we do on behalf of Ohio's physicians is an invaluable benefit of belonging to the OSMA.

## MEDICAL LIABILITY REFORM

The state legislature has heard the calls of Ohio's physicians and the OSMA to continue developing solutions to the on-going medical liability crisis. After enacting the OSMA's tort reform package in December 2002, including meaningful caps on non-economic damages, the legislature embraced another round of OSMA reforms, culminating in the enactment of House Bill 215, legislation that calls for a "certificate of expert review" in all medical liability cases.

Listed below is a summary of the eight different laws enacted over the last 18 months:

- Senate Bill 281 - Effective in April 2003, the measure places limits on non-economic damages at \$350,000 in most cases. The law also places time limits on bringing a medical claim, changes the "collateral source" rule, makes it easier for doctors and patients to enter into arbitration agreements and allows judges to reduce attorney contingency fees that are excessive.
- Senate Bill 120 - Effective in April 2003, the measure abolishes in most cases the concept of "joint and several" liability. The old law of joint and several liability meant that if a doctor was only 20% at fault, that doctor could be required to pay 100% of the damages. The effect of this new law is that individual defendants can only be held responsible for their *proportionate* share of the damages. So, if a doctor is found 20% at fault, that doctor would only be required to pay 20% of the damages.

- Senate Bill 179 - Effective in April 2003, this measure expands the current "peer review" for hospitals and insurers to also cover "healthcare entities." The effect of this new law is that healthcare entities outside the traditional hospital setting, i.e., outpatient surgery centers, health clinics, etc., are granted immunity from liability for conduct that occurs within the scope of a peer review committee. The law also provides that proceedings and records within the scope of the review committee are not discoverable in civil actions.

- Senate Bill 86 - Effective in April 2004, this new law extends the liability protections provided to physicians working in free clinics to physicians who care for indigent patients in the physician office setting.

- Senate Bill 187 - Previous law only required medical liability insurers to provide physicians with a 30-day notice of intent not to renew or cancel a policy. This often left physicians inadequate time to find alternative coverage. The new law doubles the notice requirement to 60 days and also requires the same advance notice of a "significant" premium increase. Additionally, the new law requires insurers to provide the Ohio Department of Insurance with adequate notice if they plan to discontinue writing medical policies in Ohio (think St. Paul).

- House Bill 212 - Effective in June 2004, this new law changes the way courts calculate "judgment interest" in liability claims. Under existing law, judgment interest can be assessed against a defendant that fails to negotiate, in good faith, a possible settlement to a claim. Under the old law, this assessment could be in the millions of dollars because the interest rate was set at 10% and was applied to past *and* future damages. The new law ties the interest rate to a market indicator (currently 4%) and provides that the interest does *not* apply to the portion of the award that is future damages.

- House Bill 282 - This new law will allow the Ohio Department of Insurance to establish a Medical Liability Underwriting Association (MLUA). An MLUA would provide a state-operated insurance coverage option in the event that Ohio's medical liability market totally collapsed. But because the MLUA is a "safety net" program when insurance is wholly unavailable at any cost, the premiums charged are typically at, or slightly above, standard market rates. However, working with the Taft Administration, we were able to secure \$12 million for the initial capitalization of the MLUA, which will help jump-start the program if and when it is needed.

- House Bill 215 - This new law calls on the Ohio Supreme Court to develop a "due-diligence" requirement on lawyers prior to filing a medical liability lawsuit.

Specifically, the legislation asks the Court to adopt a new Rule of Civil Procedure that would require plaintiffs' lawyers to accompany a medical lawsuit with a "certificate of expert review." This certificate would be an affidavit from an expert witness (a physician in the same or similar specialty

## **Legislative Wrap-up (cont.)**

as the defendant) stating 1) the expert's qualifications; 2) that the expert is familiar with the applicable standard of care; 3) that in the expert's professional judgment the standard of care was not met and this breach of the standard of care resulted in the injuries to the patient.

The OSMA is currently working with the Ohio Supreme Court Rules Committee on this plan and is optimistic that the proposal will ultimately be approved as a new rule of procedure for Ohio's lawyers.

H.B. 215 also made significant changes in how expert witnesses are used in medical liability cases. In addition to existing qualifications for expert testimony, this new law requires experts to be in the same or substantially similar specialty as the defendant. Also, if an expert is "board certified", the certification must be one that is recognized by the American Board of Medical Specialties or the American Board of Osteopathic Medical Specialties.

The new law also gives the Ohio State Medical Board jurisdiction of out-of-state physicians serving as expert witnesses. The result of this provision means that the OSMB can take disciplinary action against an out-of-state doctor who provides fraudulent testimony or testimony that is wholly without foundation in research or medicine.

## **POLITICAL OUTLOOK 2004**

On November 2nd, President George W. Bush faces a re-election challenge from Sen. John Kerry of Massachusetts. According to political observers, Ohio will be the number one battle ground state for the presidential race.

U. S. Senator George Voinovich also faces a re-election challenge from Cleveland state Senator Eric Fingerhut. OMPAC has recommended the re-election of Senator Voinovich. Additionally, all 99 members of the Ohio House of Representatives and half of the Ohio Senate will be on the ballot and OMPAC will play an active role in many of those races.

Finally, the Ohio Supreme Court elections remain OMPAC's top priority. OMPAC has recommended that OSMA members vote for the following Ohio Supreme Court candidates:

- Chief Justice Tom Moyer
- Justice Terrence O'Donnell
- Judge Judy Lanzinger

## **Prescription for a Fair Court**

Want to get the message to your patients about the importance of the Ohio Supreme Court elections? A new patient education political action committee, Ohio Patients for a Fair Court, is offering mock prescription pads to Ohio doctors to give to their patients. The prescription pads, titled "Prescription for a Fair Court" tell patients to vote for Chief Justice Tom Moyer, Justice Terrence O'Donnell and Judge Judith Lanzinger. The prescription pads, which are free, are available online at [www.ohiopfc.com](http://www.ohiopfc.com). The pads will be shipped starting August 13, 2004, so get your order in early.

## **AETNA & CIGNA SETTLEMENT INFORMATION AVAILABLE**

Information is now available to Ohio physicians who were participants in the Aetna or Cigna health plans and who may benefit from the settlements of the class action lawsuits. If you were a participant in either of these programs and believe you may be entitled to relief under the settlement agreements, you may obtain more information by calling the Mahoning County Medical Society at 330-758-1624, the Ohio State Medical Association at 614-527-6762, or by logging on to the website [www.hmocrisis.com](http://www.hmocrisis.com).

## **OSMA SECURES \$15 MILLION IN UNPAID MEDICAID CLAIMS**

The OSMA Payer Relations Department was recently able to get Medicaid to release over \$15 million for old, unpaid claims, much of which was held in "suspense" pending a special manual review that lasted well over a year. Starting May 26, Medicaid began to release reimbursement for these unpaid claims. While this should eliminate a considerable amount of old, unpaid claims, the backlog cannot be totally eliminated until appropriate system enhancements are put in place by the state.

If you are a Medicaid provider entitled to reimbursement for old, unpaid claims, there is no need to refile if Medicaid advised your practice the claims are in "suspense". To do so only compounds the problem and backlog. The OSMA requests that members notify the association regarding payments received as a result of this current effort, and also to continue alerting OSMA of payment delays in the future. If you did not receive a copy of the Medicaid Fax-Back Form from the OSMA, call the Mahoning County Medical Society at 330-758-1624, or the OSMA at 614-527-6762 and one will be sent to you.

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